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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

In re PERL M., a Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent.

v.

CRYSTAL M.,

Defendant and Appellant.

B286968

(Los Angeles County
Super. Ct. No. DK18878A)

APPEAL from a judgment of the Superior Court of
Los Angeles County. Robert S. Wada, Judge. Affirmed.

Emery El Habiby, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Acting Assistant County Counsel, and Stephanie Jo Reagan,
Deputy County Counsel for Plaintiff and Respondent.

Crystal M. (mother) appeals from a judgment declaring her child, Perl M., a dependent of the court pursuant to Welfare and Institutions Code section 300, subdivisions (b) and (c).¹ Mother contends that the jurisdictional findings under section 300 were improper as a matter of law, and that substantial evidence did not support the court's jurisdictional or dispositional findings.

We find no error and therefore affirm the judgment.

COMBINED FACTUAL AND PROCEDURAL BACKGROUND

The family consists of Perl M. (born June 2012), mother, and Arnold N. (father).² At the time this matter was initiated, mother and father were in the midst of an ongoing child custody case. Mother had custody and father had unmonitored visits on Monday, Wednesday and Friday evenings from 5:30 p.m. to 7:30 p.m.

Initial referral and detention

On July 28, 2016, the Department of Children and Family Services (DCFS) received an immediate response referral alleging sexual abuse of the child by father. Maternal grandmother (MGM) had picked up Perl after a visit with father. Perl reported to MGM of pain in her vaginal area, which was red. MGM reported having pulled a black fabric from the area of the child's vagina. The child reported that father rubbed her vaginal area with a knife and also put the knife to her neck and said "I'm going to kill you!" When mother got home around 9:00 p.m., Perl was crying in pain and said that father put something in her. Mother and MGM took the child to the hospital that night.

¹ All further statutory references are to the Welfare & Institutions Code.

² Father is not a party to this appeal.

Mother videotaped the child reporting that father sexually assaulted her.

A DCFS social worker responded to Perl's home, where she lived with mother and MGM. Mother reported that Perl cries every time she has to visit with father and is afraid of him. Mother previously obtained a restraining order against father because he kicked and raped her when she was pregnant with Perl.

MGM stated that she was wiping Perl in the bathroom after her visit with father, and Perl screamed "Oww that hurts!!" Perl stated that father put trash and a knife in that part of her body. MGM pulled out something black, like lint, from inside Perl's vagina.

The social worker interviewed Perl in the bedroom with mother present. Perl was playful and acting silly during the interview. When the social worker asked her how her visit with father went, Perl stated "Arnold is bad, he put trash here." She then pointed between her legs. Perl was unable to explain the meaning of trash. Perl also stated that father put a knife in her "butt," pointing in between her legs. When the social worker asked Perl how big the knife was, Perl indicated a span of about three feet with her hands, stating "this big." Perl continued to be playful during the interview, throwing herself back on the bed, and trying to avoid the social worker's questions by looking around. When the social worker asked Perl if she wanted to see father again, Perl stated "No! No! No!" She folded her arms against her chest and made a "mad face." The child then shut down, and the social worker was unable to ask any more questions.

The social worker interviewed father at his home the following day. Father claimed that the allegations were "ridiculous." Father reported ongoing problems with mother and

MGM. Father became visibly upset and denied any inappropriate touching of Perl. He also denied that Perl complained of any pain during her last visit. Father reported a good relationship with Perl. He denied that Perl calls him “Arnold,” stating that she calls him “Daddy.” Father was willing to take a lie detector test to prove that the allegations were lies. He reported being “sick and tired” of mother and MGM jeopardizing his visits with Perl.

Father acknowledged that mother had obtained a restraining order against him during her pregnancy, though he denied any domestic violence or abuse in their relationship. Father explained that a friend had advised him to just agree to the restraining order since the relationship was over. Father did so “because he did not want to have to deal with the situation or mother further.” Father indicated that he now regretted that decision.

A forensic examination of Perl was inconclusive. During the forensic examination, Perl revealed that mother, father and MGM are all “bad to each other.” The child also indicated that father cut her with a large knife, but there were no cuts or marks on her body.

The social worker spoke to mother’s psychiatrist, Dr. Solorzano, who had been treating mother for trauma for four years due to father’s alleged abuse. Dr. Solorzano did not believe Perl had been coached. Perl’s babysitter never observed any marks or bruises on Perl, but reported that mother and grandmother told her that Perl had such marks after coming home from visits with father.

On August 22, 2016, DCFS filed a petition pursuant to section 300 on behalf of Perl. The petition alleged that father sexually abused Perl and engaged in domestic violence against mother, including forcible rape.

At the initial hearing on the petition, both mother and father appeared. The juvenile court ordered Perl detained from father and released to mother. Father was authorized to have monitored visits with Perl in a therapeutic setting.

Jurisdiction/disposition report and first amended petition

On August 30, 2016, a social worker attempted to interview Perl, who was energetic, silly, and happy. It was impossible to interview her because mother interrupted and Perl was unwilling to talk about father. Mother indicated that Perl referred to father as “Arnold.” She reiterated that Perl was unhappy about visiting father and had expressed that she was scared of him.

Father adamantly denied the allegations. He asserted that mother and MGM had been trying to prevent him from having a relationship with Perl since she was born. He showed the dependency investigator pictures of himself with Perl in which Perl looked happy and affectionate with him. Father also said Perl did not call him “Arnold,” she called him “Daddy.”

The dependency investigator obtained a copy of the July 28, 2016 police report, in which MGM had reported that Perl said father touched her vagina with a knife, put trash inside her vagina, and threatened to kill her. In response to deputies’ questions to Perl if something happened with a knife, and she told them “Arnold cut me.” She added that she took the knife away from him and used it to cut his throat. When deputies informed Perl that father had not been cut with a knife, she admitted to lying about cutting Arnold. Further, the emergency social worker who initially responded indicated that she had observed video footage of Perl, which suggested that Perl may have been coached. Though Dr. Solorzano acknowledged the coaching concerns after viewing the video, she did not believe Perl had been coached, stating that the child genuinely seemed to fear father.

On December 7, 2016, DCFS filed a first amended dependency petition. The following allegation was added under section 300, subdivisions (b) and (c):

“The child Perl . . . is a victim of an ongoing custody dispute between the mother . . . and father . . . , which includes the mother . . . making accusations that the father physically and sexually abused the child Perl and the mother and grandmother repeatedly exposing Perl to their views regarding the father, child custody issues, ongoing visitation issues, and alienation of affection. Further, the child has been diagnosed with Adjustment Disorder with mixed emotions and conduct. This ongoing custody dispute places the child/children at substantial risk of suffering serious emotional damage.”

At a December 7, 2016 hearing, Perl was released to mother pending the scheduled adjudication hearing.

Amended petition investigation

When mother was interviewed about the new allegations, she veered off topic and focused on the initial allegations against father. When the investigator informed mother that the therapeutic visitation monitor reported that Perl appeared to enjoy visits with father, mother suggested that Perl was only pretending.

Father felt that the visits went well. Unfortunately after the first few visits the therapeutic monitor began receiving accusatory text messages from mother, causing her to decline serving as a monitor for further visits. The visitation monitor reported that Perl smiled, laughed, and played jovially during the visits with father. She also regularly referred to father as “Daddy,” although she told the monitor not to tell mother that she called father that.

In an addendum report dated December 21, 2016, the dependency investigator concluded that Perl was experiencing confusion based on mother's emotions towards father. While mother appeared genuinely terrified of father, father was never charged and the alleged abuse occurred prior to Perl's birth.³ The dependency investigator concluded that there was insufficient evidence to sustain the sexual abuse allegation based on "the apparent lack of physical evidence, the child's inability to discern the difference between the truth and a lie, her inconsistent and false statements to Law Enforcement/Forensic Interviewer . . . , her failure to disclose sexual abuse during the forensic interview, and the therapeutic monitor's positive reports that Perl did not appear scared or anxious around her father." In addition, mother repeatedly impeded the investigative process, while father was proactive and cooperative. Mother's actions to impede the investigative process included problematic behavior during attempted interviews with Perl; harassment of the therapeutic monitor to the point where the monitor was no longer willing to provide services; lack of cooperation regarding Perl's therapy; and failure to sign releases with Perl's therapist in a timely manner. Thus, it appeared that the mother's unresolved issues toward father or a possible undiagnosed mental health condition, coupled with Perl's awareness of the child custody issues, may have served as a catalyst to the sexual abuse allegations.⁴ However, DCFS suggested that ongoing jurisdiction

³ As of September 6, 2016, criminal charges against father were being reviewed. During mother's interview, she never mentioned that father previously raped her. In addition, father's CLETS showed no criminal charges had ever been filed.

⁴ A criminal investigation against father was subsequently closed.

was necessary to ensure that the family received therapeutic services to mitigate the case issues.

Mother did not cooperate with DCFS's efforts to link Perl to a neutral therapist. It was after a significant lack of cooperation from mother, that DCFS first received information that Perl's therapist was a student intern with limited experience. Then, in February 2017, DCFS learned that Perl had participated in 19 sessions with Dr. Ulian, an associate of Dr. Solorzano. Perl's sessions with Dr. Ulian went against DCFS's recommendation that Perl see a neutral therapist and not anyone at Dr. Solorzano's practice. Dr. Ulian reported that Perl showed a distinct fear of father, and tapped into mother's fears. Dr. Ulian was "bewildered" by positive reports of Perl's therapeutic visits with father, which were the complete opposite of what she and the mother had witnessed.

DCFS recommended that the court should sustain the allegation under subdivision (c)(1) suggesting Perl was suffering serious emotional damage due to her parents' custody dispute. DCFS further recommended that Perl remain in the home of mother, with ongoing monitored visits to father and DCFS discretion to liberalize.

Commencement of adjudication proceedings

The contested adjudication began on March 2, 2017. Mother moved to dismiss count (c)(1) on the ground that there was no evidence that she had done anything to place Perl at substantial risk of harm. The juvenile court denied mother's motion.

Dr. Carole Lieberman was called as an expert in child sexual abuse, but the court found that she did not qualify as an expert in this case. Cliff Sabath, Ph.D., who had treated mother, testified that mother was referred to his facility five years ago for stress; she was underweight, emotional, anxious, and

traumatized. In July 2016, mother and MGM came to the office with Perl after she had reported abuse by father to them. Dr. Sabath had no indication that mother or MGM was lying to him. He saw no evidence of coaching, and he never saw mother do anything to cause Perl emotional distress. He never treated Perl.

Dr. Solorzano testified that mother became her patient in 2012, when mother was pregnant, at risk for mental breakdown and at risk for losing her pregnancy. Mother was diagnosed with posttraumatic stress disorder as a result of father's alleged abuse. Dr. Solorzano did not believe mother was untruthful, and believed mother's fear for Perl as it related to father was genuine.

Section 385 modification

During the pendency of the adjudication proceedings, a referral was made alleging that father physically abused Perl. A social worker interviewed Dr. Ulian, who stated that on April 11, 2017, mother informed Dr. Ulian that Perl had returned from a visit with father with a swollen lip. Father denied the allegations. Dr. Ulian stated that Perl was definitely afraid of father, and had told Dr. Ulian that father wanted to kill her.

A social services worker had seen Perl on April 12, 2017, and had not observed Perl to have a swollen lip. Also, mother failed to report any of this information on April 19, 2017. On May 8, 2017, the social services worker spoke with Perl's teacher and school manager, neither of whom observed any suspicious marks on Perl. Perl reported that she continued to enjoy visits with father, felt safe with him, and reported no abuse. In March and April 2017, the social worker observed visits between father and Perl at the park. Perl played with father and referred to him as "Daddy." She demonstrated no fear and was seen smiling, laughing, and hugging him.

When the social worker met with mother to discuss the new referral, mother kept changing her story, had an excuse for every

question, and would not make eye contact. The worker looked at photos taken of Perl by mother, but the purported injury looked like a cold sore or chapped skin.

On May 16, 2017, mother sent a text message to the social services worker that Perl had disclosed new abuse to Dr. Solorzano. Specifically, on May 15, 2017, Perl disclosed that father had licked her vagina at his house during a monitored visit the previous day. However, when the social services worker tried to interview Perl, mother could be observed hiding in the hallway. Perl kept looking in mother's direction and told the social worker, "Arnold licked me." Perl also said father put two fingers in her vagina. When the social worker asked Perl what happened, Perl asked the social worker if she could tell her in her ear. She then whispered to the social worker "No." The social worker asked Perl if she wanted to see her father, and Perl whispered, "yes."

Based on the information provided, the dependency investigator cautioned that the emotional abuse to Perl was escalating. In the investigator's opinion, mother was coaching the child and attempting to sabotage the child's reunification and visits with her father. DCFS concluded that Perl's safety and emotional well-being could no longer be assured in mother's care, and recommended that she be detained from mother and suitably placed.

On May 18, 2017, the juvenile court ordered Perl detained from mother and suitably placed.

Continued adjudication proceedings

Dr. Solorzano resumed her testimony on May 25, 2017. Approximately a week earlier, mother brought Perl to the office where Perl reported to Dr. Solarzano that Arnold had licked it and it felt weird. Perl was nervous and kept looking down. Nothing, however, in the conversation led Dr. Solorzano to

believe that Perl had been coached. With respect to Perl's alleged injured lip, Dr. Solorzano observed the lip and found it appeared swollen and a little purple, with a small cut.

Maternal grandfather testified that he observed behavioral problems with Perl following visits with father. Roxanna Gutierrez, a friend of mother's, also testified. Perl had informed Gutierrez that father was mean and threatened mother. MGM testified that when she picked up Perl from a visit with father on July 27, 2016, Perl stated that father was mean to her and she was scared. MGM had never known Perl to lie.

Mother's testimony repeated the various allegations against father throughout the proceedings. At the continued hearing on August 15, 2017, mother denied making any allegations that were false and denied talking to Perl about father. Father testified that he wanted Perl to be happy and have both parents in her life.

The court received into evidence reports regarding Perl's visits and telephone calls with mother. Perl's foster mother testified that mother coached Perl on the phone, stating "Tell Bobbie you want to come home," and "Tell Bobbie you feel safe at home." Perl informed her foster mother that Arnold used to "hit my mommy a lot." When the foster mother asked Perl if she had ever seen that, Perl said "no." Perl informed the foster mother that Arnold used to hit mother when Perl was in mother's belly. When the foster mother explained that Perl could not have witnessed this, Perl admitted that mother had told her this.

During a forensic interview, Perl stated that her mean dad hit her when she was a baby girl and her mom took her to the doctor. She said she bit her dad and then he bit her lip. Perl also talked about being in her mother's stomach and her father kicking her mother's stomach. She stated that father's wife also physically abused her. With respect to sexual abuse, Perl said

Arnold put a knife to her throat and vaginal area. She also said Arnold was going to kill her. Perl's demeanor was playful when she recounted this information. When asked if she remembered this happening, she stated, "Um, no." Perl was asked who told her these things. Perl replied, "Nobody tells me, but my mom reminds me." Perl stated, "She remind me that he put the knife here and put trash here and she remind me he hurt me."

In a last minute information for the court filed on June 7, 2015, DCFS updated the court on the status of all pending referrals: the May 3, 2017 referral of physical abuse was deemed unfounded; the May 18, 2017 referral for sexual abuse was deemed inconclusive; and the emotional abuse allegation against mother was substantiated.

DCFS and Perl's counsel asked the juvenile court to sustain the allegations of emotional abuse under section 300, subdivision (c). Father's counsel also argued that the section 300, subdivision (c) count be sustained and asked that all other counts be dismissed. Mother's counsel argued that the court should dismiss all counts against her client based on insufficient evidence. She further requested that, should the court decide to sustain any of the counts alleged, that the child be returned to mother's care and custody.

On October 3, 2017, the juvenile court ruled as follows: the sexual abuse and domestic violence allegations against father were stricken as the court found them to be untrue, and the allegations of emotional abuse under count (c)(1) were sustained.⁵ The court stated that the child is a "victim of an ongoing dispute between mother and father," and found that "mother and maternal grandmother . . . have created the situation in which

⁵ An identical count was set forth under subdivision (b)(3).

there is risk of harm to the child for serious emotional, physical or other damage.” The child was thus adjudged to be a person described by section 300. The child was declared a dependent of the court pursuant to section 300 by clear and convincing evidence. The court found that there were no reasonable means by which the child’s physical and emotional well being could be protected without removal from mother. There was insufficient evidence to remove her from father, thus the court released the child to father, and ordered DCFS to make frequent unannounced visits. Mother’s visits were to be monitored. The juvenile court appointed an expert pursuant to Evidence Code section 730 to evaluate mother.

On October 6, 2017, mother timely filed a notice of appeal from the findings and orders of the court.⁶

DISCUSSION

I. Standard of review

When reviewing a juvenile court’s jurisdictional finding, we use the substantial evidence standard of review. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393 (*Savannah M.*)) Under this standard, we look to the entire record to support the findings of the juvenile court. (*In re A.M.* (2010) 187 Cal.App.4th 1380, 1387 (*A.M.*)) We review the record in the light most favorable to

⁶ The notice of appeal states that mother appeals from the findings and orders made October 2, 2017. However, the date appears to be an error as the juvenile court made its findings and orders on October 3, 2017. We liberally construe the notice of appeal to encompass the findings and orders made on October 3, 2017. (*Russell v. Foglio* (2008) 160 Cal.App.4th 653, 661 [“notices of appeal are to be liberally construed so as to protect the right of appeal if it is reasonably clear what appellant was trying to appeal from”].)

the judgment and affirm the order even if there is evidence supporting a contrary finding. (*Id.* at pp. 1387-1388.)

Mother frames the question of whether jurisdiction was proper under section 300 as one of law. She argues that Perl's diagnoses of "adjustment disorder" and "parental alienation syndrome" were insufficient as a matter of law to support jurisdiction under section 300, subdivision (c).⁷ In support of her position, mother cites *In re R.C.* (2011) 196 Cal.App.4th 741, 748 (*R.C.*). In *R.C.*, the court reviewed a juvenile court determination that a step-father's "tongue-kissing" of his step-daughter did not rise to the level of sexual abuse under section 300, subdivision (d). The *R.C.* court reviewed this issue as a matter of law, since "the proper interpretation of a statute and the application of the statute to undisputed facts are questions of law, which [are reviewed] de novo. [Citations.]" (*Ibid.*)

The present matter is distinguishable. Here, we do not decide whether a single form of conduct, or a single diagnosis, in and of itself, is sufficient to warrant jurisdiction. The juvenile court did not rely on a single or even multiple psychological conditions as the basis for its ruling. Instead, the juvenile court found that Perl was at substantial risk of emotional harm from mother's actions. Thus, we must review the juvenile court record

⁷ DCFS responds that mother forfeited her right to challenge the sufficiency of the petition by failing to file a demurrer in juvenile court. In reply, mother claims she does not challenge the sufficiency of the petition, but simply that Perl's diagnoses of adjustment disorder or parental alienation syndrome do not constitute serious emotional damage under the statute. In other words, mother characterizes her argument as follows: "Given that Perl was diagnosed with both of these conditions, her emotional harm was not 'severe' enough to be cognizable under the statute." Thus, we do not address any purported challenge to the sufficiency of the petition.

as a whole, looking at all of the evidence before the juvenile court, not just the labels placed on the child's condition. Our role is to determine if substantial evidence, contradicted or uncontradicted, supports the jurisdictional findings. In doing so, "we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court." [Citation.]” (*In re D.L.* (2018) 22 Cal.App.5th 1142, 1146.) Our goal is to review the entire record to determine whether it discloses substantial evidence from which a reasonable trier of fact could find that the order is appropriate. (*Ibid.*)

II. Applicable law

Section 300, subdivision (c), provides that a child is within the juvenile court's jurisdiction if that child is:

“[S]uffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable or providing appropriate care.”

Thus, to prove a child is subject to jurisdiction under section 300, subdivision (c), DCFS bears the burden of showing “(1) serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior or a substantial risk of severe emotional harm if jurisdiction is not assumed; (2) offending parental conduct; and (3) causation. [Citation.]” (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1379 (*Brison C.*)). When a child is at risk, the juvenile court may take jurisdiction before the child has suffered any actual harm. (*In re Eric B.* (1987) 189 Cal.App.3d 996, 1002-1003.) A current risk of

harm can be shown by evidence of past conduct, if there is a reason to believe the conduct will recur. (*Savannah M.*, *supra*, 131 Cal.App.4th 1387.)

III. Substantial evidence supported the juvenile court's finding of jurisdiction under section 300, subdivision (c)

A. Perl showed serious emotional damage, or risk thereof

Evidence in the record supports the trial court's determination that Perl was suffering serious emotional damage, or was at risk of suffering such damage.

Mother herself informed social workers repeatedly that Perl was exhibiting severe anxiety. Mother, as well as therapists observing the situation, informed DCFS that Perl had been verbalizing a fear of father for the past two years. Furthermore, according to mother, Perl was anxious and acted out after her visits with father. She became defiant, sad, angry, and acted aggressively toward family members. Maternal grandfather testified that he noticed behavioral problems following Perl's visits with father. Perl reported nightmares and frequent night terrors, including a recurring nightmare about a wolf trying to eat her. Perl's therapist characterized Perl as showing symptoms of anxiety.

In addition to these symptoms reported by mother, mother's parents, and Perl's therapists, Perl was reporting violent acts by father of which there was no evidence. Perl reported that father cut her with a knife, then she used the knife to cut father's throat. She later admitted to lying about the violent acts against father, but maintained that father had cut her with a knife, although there was no physical evidence of any such action.

In addition to these disturbing descriptions of violence, Perl's most recent therapist, Dr. Ulian, described Perl as

displaying “fear or hyper vigilance.” She was considering diagnosing Perl with posttraumatic stress disorder or unspecified trauma.

Mother’s argument that a diagnosis of adjustment disorder does not rise to the level of serious emotional harm is not well taken. The record provides far more evidence of Perl’s behavior than a mere diagnosis. Mother provides detailed information about the meaning of an adjustment disorder diagnosis, including its causes, symptoms, and the rates of occurrence within the population. The juvenile court need not scrutinize the details of the diagnosis of adjustment disorder in order to conclude that a child is suffering, or at risk of suffering, severe emotional harm.⁸

Mother argues that Perl demonstrated silly, playful behavior during interviews. In addition, in June 2017, Dr. Mendoza, a therapist who assessed Perl, described her as a “resilient, bright little girl” who did not meet the medical necessity for mental health services. Notably, this assessment was made when Perl was living with a foster family for the first time. Dr. Mendoza also speculated that the “new, carefree environment” may be a “relief” to Perl. Perl’s carefree attitude while outside the presence of mother contrasts with mother’s reports of Perl’s anxiety and fear.

Mother’s arguments highlight the conflicting evidence in the record regarding Perl’s mental and emotional state. We do not reevaluate this evidence. Instead, we review the record in the light most favorable to the court’s determinations. (*In re D.L.*, *supra*, 22 Cal.App.5th at p. 1146.) Issues of fact and credibility are exclusively within the province of the trial court. (*Ibid.*) Here, the trial court found credible the evidence

⁸ Nor is there any indication that the detailed information mother now provides regarding adjustment disorder was ever presented to the juvenile court.

suggesting that Perl was suffering, or at risk of suffering, serious emotional damage. Our review of the record as a whole, including testimony from mother, mother's family and friends, as well as various social workers, discloses substantial evidence from which a reasonable trier of fact could find that Perl was suffering from, or at risk of suffering, serious emotional harm. (*Ibid.*)

B. There was sufficient evidence of offending parental conduct and causation

Evidence in the record further supports the juvenile court's determination that mother engaged in offending parental conduct and that such conduct caused Perl's emotional distress.

The record reveals a distinction between the reports of Perl's behavior with mother and the reports of Perl's behavior when she was not in the company of mother. Perl displayed her feelings of distress, fear and anxiety only in mother's presence. In contrast, when she was with father, she was observed smiling, laughing, and playing jovially. She showed no signs of fear. Dr. Ulian reported that the positive reports of Perl's visits with father were the polar opposite of what she and mother had witnessed. Dr. Ulian observed that Perl appeared to tap into mother's fears.

Further, there was evidence that mother was exacerbating Perl's fears by "reminding" her of father's alleged abuse. During a forensic interview, Perl stated that father was going to kill her. When asked who told her this, Perl stated: "Nobody tells me, but my mom reminds me." In addition, the foster mother stated that Perl admitted that mother told her that father was abusive when Perl was "in her belly." The juvenile court could have concluded from this evidence that mother was the source of Perl's fear and anxiety.

Mother engaged in additional detrimental actions during the investigation of the new allegations in May 2017. Mother did not allow the social worker to interview Perl alone, and instead lurked in the hallway where Perl could observe her. Perl was looking in mother's direction when she stated "Arnold licked me," and stated that he put two fingers in her vagina. The child had to whisper in the social worker's ear in order to avoid mother hearing her denial of the allegations. Perl also had to whisper that she wanted to see father. This evidence supports the trial court's determination that mother's actions caused Perl to suffer emotional distress.

Mother states her fears were genuine, and there was nothing suggesting that her claims of abuse at the hands of father were untrue. Mother claims that during their brief marriage, father beat, raped, and starved mother, and that she obtained a five-year restraining order protecting herself and the child from father. Thus, even if mother's fears turned out to be untrue, her concerns of physical and sexual abuse were well-founded. Thus, mother argues, the element of parental fault is missing.

Contrary to mother's position, there was evidence in the record that mother's claims of abuse were untrue. Father consistently denied mother's allegations, and appeared confused when questioned about the rape allegations made by mother. Father had never been arrested for anything, and a background check revealed no criminal history. Father stated that he agreed to the restraining order out of a desire to simply not have to deal with mother any more. The trial court was entitled to determine what weight to give this conflicting evidence regarding mother's claims of alleged abuse at the hands of father. As set forth above, we do not reevaluate the trial court's factual or credibility

determinations. These issues are within the province of the trial court. (*In re D.L.*, *supra*, 22 Cal.App.5th at p. 1146.)

Mother further argues that mother did not initiate any of the allegations of abuse. Mother points out that all allegations initially came either from the child or from MGM. Thus, mother argues, causation cannot be established. Again, mother sets forth one interpretation of the facts. It is not an interpretation that the juvenile court accepted, and it is not our role to reinterpret those facts. Instead, we view the record in the light most favorable to the juvenile court's decision, even when there is evidence supporting a contradictory finding. (*In re A.M.*, *supra*, 187 Cal.App.4th at p. 1387). As set forth above, the record contains ample evidence that mother's actions caused the harm to Perl.

IV. The hostile divorce cases are distinguishable

Mother argues that parental alienation syndrome is insufficient as a matter of law to support jurisdiction under section 300, subdivision (c). Mother provides some background regarding parental alienation, which is the estrangement of a child from a parent and is a common dynamic in some divorcing families.⁹ Respondent has not addressed mother's argument regarding parental alienation syndrome, as the sustained count under section 300, subdivision (c) does not reference this syndrome.

Mother is correct that the tense atmosphere created by a hostile divorce is generally insufficient to warrant jurisdiction under section 300, subdivision (c). (*In re John W.* (1996) 41 Cal.App.4th 961, 977 (*John W.*)) In *John W.*, the parents stipulated to juvenile court jurisdiction pursuant section 300,

⁹ Mother cites Gardner, Richard. (2001) "Parental Alienation Syndrome (PAS): Sixteen Years Later." Academy Forum, 45(1):10-12.

subdivision (c), because “the parents’ ‘ongoing custody disputes [had] created a tense, hostile and unpredictable environment.’” (*Id.* at p. 966.) The child, who was just over two years old, had made some statements suggesting that he had been sexually molested, but nothing was substantiated. The child later indicated that his mother was making him lie about his father’s alleged sexual abuse. (*Id.* at pp. 966-967.) The juvenile court terminated jurisdiction with a custody order giving each parent 50 percent custody. The *John W.* court emphasized that in reversing and remanding the exit order for error, it would remand to the family court, not the juvenile court. The *John W.* court stated: “We hope in the future that juvenile courts will be discerning when they are presented with stipulated petitions based on ‘serious emotional damage’ under subdivision (c) of section 300. In this case jurisdiction was predicated on a ‘tense’ atmosphere caused by a parental divorce. That was hardly enough. [Citation.]” (*Id.* at p. 977, fn. omitted.)

Similarly, in *Brison C.*, the child was in the middle of an extensive custody battle between the parents. The *Brison C.* court agreed with the mother that the record did not contain substantial evidence showing that Brison was seriously emotionally damaged or that he was in danger of becoming so. The child “did not exhibit behavioral abnormalities or difficulties,” and “[n]o psychological testimony was presented.” (*Brison C.*, *supra*, 81 Cal.App.4th at p. 1380.)

However, both *John W.* and *Brison C.* are distinguishable. In *John W.*, the parents stipulated to juvenile court jurisdiction due to a tense ongoing divorce. Here, no such stipulation occurred, and the facts showed more than a tense atmosphere created by the divorce. Jurisdiction of Perl was justified by a range of troubling symptoms, including heightened anxiety, aggression, defiance, and violent accusations against father. The

court found that mother was engaging in offending parental conduct that was leading to severe distress and anxiety on the part of the child, as well as interfering with her relationship with her father. Unlike the child in *Brison C.*, who was not exhibiting any behavioral difficulties, Perl was acting out, exhibiting defiance, sadness, anger, and aggression. She also reported nightmares and frequent night terrors. Under the circumstances, *John W.* and *Brison C.* do not mandate a different outcome in this case.

V. Mother's challenge to the juvenile court's jurisdictional finding under section 300, subdivision (b)(1), is not justiciable

Mother argues that section 300, subdivision (b)(1), requires a finding that the child has suffered, or is at substantial risk of suffering, serious physical harm or illness resulting from the parent's inability to supervise or protect the child. Because there is no provision in section 300, subdivision (b)(1) to support jurisdiction based on emotional harm, mother argues, the juvenile court's decision to take jurisdiction of Perl under this provision was error.

Because we have determined that the record supports the juvenile court's decision to take jurisdiction of the child under subdivision (c), we need not address the challenge to jurisdiction under subdivision (b). (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1492 (*I.A.*)). Any decision we might render on the allegations sustained under (b) "will not result in a reversal of the court's order asserting jurisdiction. The juvenile court will still be entitled to assert jurisdiction over the minor" under subdivision (c). (*Ibid.*) Further, the court will still be able to retain jurisdiction over mother and adjudicate her parental rights. (*Ibid.*) As set forth in *I.A.*:

“Under these circumstances, the issues [mother’s] appeal raises are “abstract or academic questions of law” [citation], since we cannot render any relief to [mother] that would have a practical, tangible impact on [her] position in the dependency proceeding.”

(*I.A.*, *supra*, 201 Cal.App.4th at p. 1492.)

The rule stated in *I.A.* is in accord with article VI, section 13 of the California Constitution, which provides that no judgment shall be set aside unless “the error complained of has resulted in a miscarriage of justice.” Our Supreme Court has interpreted this language to permit reversal “only if the reviewing court finds it reasonably probable that the result would have been more favorable to the appealing party but for the error. [Citation.]” (*In re Celine R.* (2003) 31 Cal.4th 45, 59-60.) The doctrine applies in juvenile dependency matters. (*Ibid.*)

Because the juvenile court’s jurisdiction over Perl is justified under section 300, subdivision (c), mother’s appeal of the finding under section 300, subdivision (b) is not justiciable.¹⁰

VI. Substantial evidence supports the dispositional order removing Perl from mother’s care

Under section 361, subdivision (a)(1), when a minor is adjudged a dependent of the court, the court may limit the

¹⁰ An appellate court may address the merits of the jurisdictional findings against one parent where “the finding (1) serves as a basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) ‘could have consequences for [the appellant], beyond jurisdiction’ [citation].” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763 (*Drake M.*)). Mother makes no argument that the exception applies in this case, therefore we decline to address this issue.

control of any parent or guardian. However, a child may not be removed from the physical custody of the parent unless there is clear and convincing evidence of one of the circumstances specifically enumerated in the statute. (§ 361, subd. (c); *In re Michael S.* (2016) 3 Cal.App.5th 977, 983.) One such circumstance is when “[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s or guardian’s physical custody.” (§ 361, subd. (c)(1).)

Disposition orders removing a child from a parent’s care are reviewed for substantial evidence. (*In re John M.* (2012) 212 Cal.App.4th 1117, 1126.) In applying the substantial evidence standard of review, we keep in mind that the trial court was required to make its order based on the higher standard of clear and convincing evidence. (*In re Noe F.* (2013) 213 Cal.App.4th 358, 367.)

Mother argues that there was no risk of harm to Perl at the time of the dispositional hearing. Mother expressed a willingness to change her behavior, participated in parenting classes and individual therapy, and had learned to express her frustrations with father in an appropriate manner. She maintained regular visits with Perl, and the visits were calm and affectionate. Mother argues that reasonable alternatives to removal existed, thus the juvenile court improperly removed Perl from her custody.

The findings supporting jurisdiction pursuant to section 300, subdivision (c) also support the juvenile court’s dispositional order. Perl’s feelings of distress and anxiety only occurred in mother’s presence. Mother was exacerbating Perl’s distress by

“reminding” her of father’s alleged abusive actions and interfering with the social workers’ attempts at determining the truth. While mother may have expressed a willingness to change, there was no evidence in the record that mother’s behavior had changed. During the jurisdictional hearing, two new allegations against father were made, neither of which was substantiated. Further, the foster mother with whom Perl was living reported that mother continued to remind Perl of father’s alleged actions in putting a knife and trash in her vagina. There was no evidence that mother’s alleged fear and distrust of father had alleviated. Under the circumstances, the juvenile court did not err in finding clear and convincing evidence of a substantial danger to Perl’s emotional well-being if returned to mother.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
HOFFSTADT